

**2003 DRAFTING REQUEST****Assembly Substitute Amendment (ASA-AB861)**

Received: 02/27/2004

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Donald Friske (608) 266-7694

By/Representing: Jennifer

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Mental Health - detent/commit  
Criminal Law - sex offenses

Extra Copies:

Submit via email: YES

Requester's email: Rep.Friske@legis.state.wi.us

Carbon copy (CC:) to:

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Pre Topic:

No specific pre topic given

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Topic:

Criteria for commitment and supervised release for a sex predator

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Instructions:

Same as SB441 with technical amendment

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Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mdsida 02/27/2004	jdye 03/01/2004	jfrantze 03/01/2004		lemery 03/01/2004	lemery 03/01/2004	

FE Sent For:

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1?	mdsida	1/3 jld	7/31	Self 3/1			

FE Sent For:

&lt;END&gt;

2003 BILL

Mon 5PM

Regen

- 1 AN ACT *to renumber and amend* 980.08 (4); *to amend* 980.01 (7), 980.02 (2)  
2 (c), 980.08 (3), 980.09 (1) (c) and 980.09 (2) (c); and *to create* 980.01 (1m) and  
3 980.08 (4) (b) 2. of the statutes; **relating to:** the definition of sexually violent  
4 person and criteria for supervised release.

*Analysis by the Legislative Reference Bureau*

Under current law, a "sexually violent person" is a person: 1) who has been convicted of, or adjudicated delinquent for, a sexually violent offense or who has been found not guilty of a sexually violent offense by reason of mental disease, defect, or illness; and 2) who is dangerous because he or she suffers from a mental disorder that makes it substantially probable that he or she will engage in acts of sexual violence.

*Substitute  
Amendment*  
This bill changes the second part of the definition for "sexually violent person" so that a sexually violent person is a person who is dangerous because he or she suffers from a mental disorder that makes it more likely than not that he or she will engage in acts of sexual violence. If a person is found to be more likely to engage in an act of sexual violence than not to engage in an act of sexual violence, then the person meets that part of the definition of "sexually violent person."

Under current law, a person who commits a sexually violent offense may be committed to the Department of Health and Family Services (DHFS) after serving a sentence or disposition for the offense if the person still is found to be a sexually violent person. A person committed to DHFS as a sexually violent person is initially placed in institutional care. After 18 months, a sexually violent person may petition the court for supervised release. Supervised release places the person in the custody

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of DHFS and subjects him or her to the conditions set by the court and to the rules of DHFS. If a person petitions the court for supervised release, the court must authorize supervised release unless the state proves that it is still substantially probable that the person will engage in future acts of sexual violence if institutionalized care is not continued.

This bill requires that, if a person petitions the court for supervised release, the court must authorize supervised release unless the state proves that it is still more likely than not that the person will engage in future acts of sexual violence if institutionalized care is not continued or that the person has not shown significant progress in, or has refused to participate in, treatment.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

✓  
SECTION 1. 980.01 (1m) of the statutes is created to read:

980.01 (1m) "Likely" means more likely than not.

SECTION 2. 980.01 (7) of the statutes is amended to read:

980.01 (7) "Sexually violent person" means a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it substantially probable likely that the person will engage in acts of sexual violence.

SECTION 3. 980.02 (2) (c) of the statutes is amended to read:

980.02 (2) (c) The person is dangerous to others because the person's mental disorder creates a substantial probability makes it likely that he or she will engage in acts of sexual violence.

SECTION 4. 980.08 (3) of the statutes is amended to read:

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1        980.08 (3) Within 20 days after receipt of the petition, the court shall appoint  
2        one or more examiners having the specialized knowledge determined by the court to  
3        be appropriate, who shall examine the person and furnish a written report of the  
4        examination to the court within 30 days after appointment. The examiners shall  
5        have reasonable access to the person for purposes of examination and to the person's  
6        past and present treatment records, as defined in s. 51.30 (1) (b), and patient health  
7        care records, as provided under s. 146.82 (2) (c). If any such examiner believes that  
8        the person is appropriate for supervised release under the ~~criterion~~ criteria specified  
9        in sub. (4) (b), the examiner shall report on the type of treatment and services that  
10       the person may need while in the community on supervised release. The county shall  
11       pay the costs of an examiner appointed under this subsection as provided under s.  
12       51.20 (18) (a).

13       **SECTION 5.** 980.08 (4) of the statutes is renumbered 980.08 (4) (a) and amended  
14       to read:

15       980.08 (4) (a) The court, without a jury, shall hear the petition within 30 days  
16       after the report of the court-appointed examiner is filed with the court, unless the  
17       petitioner waives this time limit. Expenses of proceedings under this subsection  
18       shall be paid as provided under s. 51.20 (18) (b), (c), and (d).

19       (b) The court shall grant the petition unless the state proves by clear and  
20       convincing evidence ~~that the person is still a sexually violent person and that one of~~  
21       the following:

22       1. That it is still substantially probable likely that the person will engage in acts  
23       of sexual violence if the person is not continued in institutional care.

24       (c) In making a decision under ~~this subsection~~ par. (b), the court may consider,  
25       without limitation because of enumeration, the nature and circumstances of the

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1 behavior that was the basis of the allegation in the petition under s. 980.02 (2) (a),  
2 the person's mental history and present mental condition, where the person will live,  
3 how the person will support himself or herself, and what arrangements are available  
4 to ensure that the person has access to and will participate in necessary treatment,  
5 including pharmacological treatment using an antiandrogen or the chemical  
6 equivalent of an antiandrogen if the person is a serious child sex offender. A decision  
7 under ~~this subsection~~ par. (b) on a petition filed by a person who is a serious child sex  
8 offender may not be made based on the fact that the person is a proper subject for  
9 pharmacological treatment using an antiandrogen or the chemical equivalent of an  
10 antiandrogen or on the fact that the person is willing to participate in  
11 pharmacological treatment using an antiandrogen or the chemical equivalent of an  
12 antiandrogen.

13 **SECTION 6.** 980.08 (4) (b) 2. of the statutes is created to read:

14 980.08 (4) (b) 2. That the person has not demonstrated significant progress in  
15 his or her treatment or the person has refused treatment.

16 **SECTION 7.** 980.09 (1) (c) of the statutes is amended to read:

17 980.09 (1) (c) If the court is satisfied that the state has not met its burden of  
18 proof under par. (b), the petitioner shall be discharged from the custody or  
19 supervision of the department. If the court is satisfied that the state has met its  
20 burden of proof under par. (b), the court may proceed to determine, using the ~~criterion~~  
21 criteria specified in s. 980.08 (4) (b), whether to modify the petitioner's existing  
22 commitment order by authorizing supervised release.

23 **SECTION 8.** 980.09 (2) (c) of the statutes is amended to read:

24 980.09 (2) (c) If the court is satisfied that the state has not met its burden of  
25 proof under par. (b), the person shall be discharged from the custody or supervision

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1 of the department. If the court is satisfied that the state has met its burden of proof  
2 under par. (b), the court may proceed to determine, using the ~~eriterion~~ criteria  
3 specified in s. 980.08 (4) (b), whether to modify the person's existing commitment  
4 order by authorizing supervised release.

**SECTION 9. Initial applicability.**

6 (1) The treatment of section 980.01 (1m) and (7) of the statutes, the  
7 renumbering and amendment of section 980.08 (4) of the statutes, and the creation  
8 of section 980.08 (4) (b) 2. of the statutes first apply to hearings, trials, and  
9 proceedings that are commenced on the effective date of this subsection.

10 (END)